

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

NATIONSRENT, INC.¹

Employer

and

CASES 7-RC-21849
 7-RC-21850

LOCAL 324, A, B, C, D, INTERNATIONAL
UNION OF OPERATING ENGINEERS,
AFL-CIO

Petitioner

APPEARANCES:

Douglas Sullenberger, Attorney, of Atlanta, Georgia, for the Employer
J. Douglas Korney, Attorney, of Bingham Farms, Michigan, for the Petitioner

DECISION AND DIRECTION OF ELECTIONS

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:²

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ The Employer's name appears as corrected at the hearing.

² Both parties filed briefs which were carefully considered.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. Questions affecting commerce exist concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Petitioner seeks a unit of all full-time and regular part-time mechanics, truck drivers, yardmen, and parts men employed by the Employer, excluding accounts payable clerks, salespersons, district fleet coordinators, dispatchers, service managers, store managers, district managers, regional directors, purchasing managers, parts supervisors, Nextel sales personnel, professional employees, office clerical employees, confidential employees, guards and supervisors as defined in the Act. The Employer contends that the appropriate unit should also include counter personnel because they share a community of interest with the mechanics, truck drivers, yardmen, and parts men. The parties also disagree as to the scope of the unit. The Petitioner seeks to represent two separate units, one at the Employer's Fraser store, and the second at the Employer's Novi store. The Employer contends that all four of its store locations, in Fraser, Novi, Hazel Park, and Traverse City should comprise one integrated unit. There is no history of collective bargaining with respect to the petitioned-for employees or the broader unit urged by the Employer.

The Employer is a Delaware corporation, with corporate headquarters in Florida, engaged in the sale, service, and rental of construction equipment and supplies. The Employer has four Michigan locations at Fraser, Novi, Hazel Park, and Traverse City, which comprise the Michigan district.

The Employer uses the hub-satellite management approach where one hub store handles some of the administrative services for each of the four satellite stores. Formerly, the hub store was in Hazel Park, but the Employer is transitioning to make Fraser the hub store because it has more property. The Novi, Hazel Park, and Traverse City stores will serve as the satellites. Using this approach, each location has a store manager and a service manager. The store manager manages the store on a day-to-day basis, and the service manager, who reports to the store manager, is responsible for overseeing the mechanics and the

parts men, and for making sure that the equipment is repaired in a proper and cost efficient manner. Hazel Park is the only store with a parts supervisor.³

District management is comprised of the facilities and operations manager, Louie J. Messina, and the district manager, Brian Hindman. Messina currently works out of the Hazel Park store, which also doubles as the district management facility, where he oversees all the stores, takes care of matters such as structural repair to store properties, resolves employee problems or grievances, answers management's requests for more employees, and handles employee terminations. He visits the stores within his district on an as-needed basis, and is at either the Novi or Fraser stores at least every other day of the week. Messina visits the Traverse City store much less frequently, about once every two weeks, because of its distance from Hazel Park.

Human resource issues are handled by Human Resource Supervisor Terri Tomiko, who is located at the Novi store. She handles all four stores' payroll, employee requests and concerns, benefit package information, personnel action forms for transfers, new employee checklist forms, and insurance related matters. District-wide safety and training programs are usually held at the Hazel Park store because it has the largest training room. District Dispatcher Rod Kelliker handles all of the department of transportation files which are kept at the Fraser store. Within the district, Michigan Fleet Manager Roland Sales is responsible for balancing the Employer's fleet throughout the Michigan district. He also monitors where all the equipment is routed and administers cycle counts to ensure that one store does not end up with all the equipment, while shortchanging the other stores. There are approximately 8 to 10 deliveries of equipment between stores each day.

A central dispatcher coordinates all four stores to ensure that they have maximum delivery fleet. There are also purchasing agents who work out of the Hazel Park store who insure that each store has the inventory it needs. All four stores look similar, with identical coloring, identical flooring, the same color scheme for the counters, and the same uniforms for all four stores throughout the district. The mechanics wear a gray color uniform, the truck drivers and yardmen wear a striped color shirt, the counter personnel and parts men wear a polo-style shirt. All four stores also use the same employee handbook, have the same store hours, and the same work schedule.

With regard to hiring, district management advertises in large news publications and local papers, and also posts signs in front of the hiring store or on

³ Both the Employer and the Petitioner have stipulated to the supervisory status of the store managers, service managers, parts supervisor, district dispatcher, human resource supervisor, district purchasing agent, facilities and operations manager, and district manager, based on their authority to hire, fire, and discipline employees.

the district internet site. The ads specify which store has an opening and interested applicants are told to respond to that store's manager and provide a resume or fill out an application. Those materials are then forwarded to the district and Facilities and Operations Manager Messina does all of the interviewing and hiring for all four stores. In some cases, the store manager also participates in the interview process depending on whether the manager has expertise in the open position. The store manager makes a recommendation to Messina, which he considers in making the final hiring decision. Customer complaints are usually received by the store managers, who send them to the district for resolution. Billing is also administered at the district level. The sales personnel represent the district, not a particular store, and all four store locations are printed on the back of their business cards.

All the store locations in the Michigan district are linked through networking or cabling, so if a customer's account is approved at one location, it is approved at all four locations. All four stores communicate with each other via Nextel radio communication, electronic mail, and computer terminals. The rental equipment does not belong to the store it is situated in, rather it belongs to the district. A customer can rent equipment at one store, and return it to another store. There are some customers who do work all over the state and utilize all four store locations.

Store managers do not have the authority to order equipment for their store's inventory. Store managers can make a request to Facilities and Operations Manager Messina and District Manager Hindman for a certain type of equipment, but Messina and Hindman make the final decision. Before a local store manager places a request to Messina and Hindman, the local store manager is required to look on the computer at the other three stores' inventory for that piece of equipment. There is a district-wide equipment list on the computer for all the stores in the district, which can be printed out as needed. All four stores have a utilization report, which Messina and Hindman use to check the store manager's request for equipment against what the customer actually needs. The local store managers also do not have the authority to order supplies without approval from district management. District Purchasing Agent Kevin Owens is responsible for communicating with counter personnel or yardmen at each store to see if they need accessories for the rental fleet. Owens is responsible for keeping a balance among the stores' inventory and also handles a majority of the computer networking and cabling among the four stores. Owens needs the approval of Messina or Hindman to order supplies or equipment, and works through them when performing computer networking functions.

Each store manager is responsible for preparing an annual evaluation of counter personnel, truck drivers, and parts men. A favorable evaluation and

recommendation from the store manager may lead district management to give that employee a raise. If there are no attendance or other problems, the recommended employee is given a raise 60 to 70 percent of the time. District management determines the amount of the raise.

The service manager submits a written report to Facilities and Operations Manager Messina regarding whether a mechanic or yardman is doing a good job. Messina uses the service manager's report, his own observations, and customer feedback, if any, in making his final evaluation of the employee. Messina bases approximately 60 to 70 percent of the decision on what the store or service manager tells him about a particular employee. Messina makes his own observations by watching mechanics and yardmen performing work when he visits each of the stores.

All discipline, short of discharge, is handled by the store manager. If an employee is missing too much work, the store manager counsels the employee and documents the problem in his/her log book. Where necessary, the store manager gives a verbal warning, and if the problem persists, the store manager issues the employee a written warning after input from district management. Drafting the written warnings is a routine task for the managers and sometimes involves merely changing the names and dates on a form letter. District management, however, still must give final approval before the warning is issued. If the problem is not corrected, district management becomes involved with the store manager consulting over the phone on how to handle the matter.

On a daily basis, store managers, service managers, the parts manager, and dispatchers within each store distribute the work assignments. If an employee has a complaint or concern, he/she reports it to his/her immediate supervisor. If the complaint or concern is not resolved, it is next taken to the store manager, then to district management and finally to a 1-800 phone number, for possible resolution.

When a particular store manager needs employees to work overtime, the manager calls Facilities and Operations Manager Messina and makes a recommendation to allow employees to work overtime. Messina grants permission to work overtime about 50 percent of the time. The decision as to which employee is to work the overtime lies with the store manager or service manager.

At the Fraser store, there are two mechanics, three counter personnel, five truck drivers, six yardmen, and one parts person. The Hazel Park store has six mechanics, four counter personnel, four truck drivers, four yardmen and one parts person. At the Novi store, there are four mechanics, three counter personnel and five yardmen. The Traverse City store has three mechanics, four counter

personnel, three truck drivers, two yardmen, and one parts person. The yardmen report to either the store manager or service manager. The truck drivers report to either the dispatchers or the store manager. If a mechanic or parts person needs to come in late or leave work early or calls in sick for the day, he/she does so through the service manager.

Within the four stores, the mechanics at each location perform service, repairs and general maintenance on all of the Employer's fleet. Occasionally, the mechanics also perform minor repairs on customers' equipment, but roughly 90 to 95 percent of the repair work is performed on the Employer's own rental equipment. Mechanics make roughly 14 to 20 dollars an hour. The yardmen at each location load and unload construction equipment as it comes in from customers. The yardmen also help load and unload equipment from drivers who are either picking it up or returning it to the store. Yardmen are also responsible for general maintenance, washing the equipment, making sure the equipment looks presentable, checking the equipment for repairs, and recommending repairs. Yardmen make roughly 9 to 12 dollars an hour. The truck drivers at each location are responsible for coordinating deliveries with the rental counters and expediting the delivery of equipment to area jobsites around the state of Michigan. Truck drivers are paid roughly 14 to 18 dollars an hour. The counter personnel at each location are responsible for every step of the process with the rental and sale of equipment that comes in and out of the store. Most counter personnel start out as yardmen. Counter personnel interact with mechanics, yardmen, parts men, and truck drivers on a daily basis, depending on the volume of business. Counter personnel are sometimes put on the road to deliver equipment or pick up supplies if there is a shortage of drivers and are also trained to operate the forklifts. They assist yardmen in loading and unloading equipment. Counter personnel are paid roughly 12 to 14 dollars an hour. The parts men at each store are responsible for supporting the mechanics, yardmen, and counter personnel on any of their equipment needs. They keep basic inventories of the equipment and take care of typical repairs. Parts men make roughly 10 to 17 dollars an hour, depending on their qualifications. Yardmen, truck drivers, counter personnel, parts men, and mechanics share the same insurance program, holiday, and vacation schedule, 401-K pension plan, lunch times, lunch break area, overtime plan, and parking area, and all attend the same operational meetings and store functions. The operational meetings cover departmental problems, and are usually held annually. There are also departmental meetings held only for the specific employees in the department which take place almost monthly. Store managers preside over both of these meetings.

At the first step of the contract process for renting equipment, counter personnel receive the initial phone call from the customer and try to determine how to accommodate that customer's needs. The counter personnel then contact,

through Nextel radio communication, the yardmen to see if their store has the requested piece of equipment. If the store where the call originated does not have that particular piece of equipment, counter personnel call other stores to locate the needed item. If the counter person finds the equipment in his/her own store, he/she makes sure that the equipment is ready when the customer is there to pick it up. Counter personnel may have to go to the yard and check with the mechanics to see if the piece of equipment is repaired. They then communicate with the customer as to when the equipment will be ready for pick up, and complete all of the necessary paperwork with the customer before equipment leaves the store. When the equipment is returned, yardmen usually communicate through Nextel radio communication to the counter personnel that a customer is returning equipment, and what if anything needs to be done with it. The counter personnel and service employees determine the amount of damage, if any, to the equipment and how much the repairs will cost. After a consensus regarding the amount of damage is reached, the paperwork is completed and the contract is closed. The equipment either stays at that store for repairs or moves to a different store if a mechanic with a certain type of skill is needed. The contract process just described is computer-generated and identical at all four stores. If a customer wants to make a purchase, counter personnel generate a sales contract, have the customer sign the contract, give the customer a copy of the contract, go to the warehouse to retrieve the item and help load it into the customer's vehicle. All employees are cross-trained on how to use the computer to pull up contracts. In addition to the counter personnel, drivers also generate contracts.

Seven employees have permanently transferred between the stores in the Detroit metropolitan area (Fraser, Novi, and Hazel Park) within the last two years. Most of these employees made the permanent transfer because of the proximity of the store to their homes. Permanent transferees are permitted to retain their total company seniority. No employee has permanently transferred from the Detroit metropolitan stores to the Traverse City store, or vice versa. However, the Employer temporarily transferred mechanics, yardmen, counter personnel, and parts men from Traverse City to Hazel Park for training purposes. The Employer temporarily transfers employees within the Metropolitan Detroit stores depending on the needs of each individual store, such as to cover heavy vacation times or to fill a certain expertise which is lacking at that store.⁴ For example, mechanics are sent from store to store to assist and may stay a week or longer. The Employer has transferred yardmen to help with the workload when there is a lot of equipment to be washed or an excessive amount of general maintenance to be done. Parts men are temporarily transferred between stores to help with inventory, training, and new programs that need to be in place. Truck drivers are also transferred from store to store depending on the workload.

⁴ The record does not indicate how frequently the temporary transfers occur.

The Fraser store is approximately 15 to 20 miles away from the Hazel Park store. The Novi store is approximately 45 to 50 miles from the Hazel Park store and the Traverse City store is approximately 200 miles from the Hazel Park store.

It is well established that a single-facility unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated with another unit, that it has lost its separate identity. *J & L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988). To determine whether the presumption has been rebutted, the Board looks at such factors as centralized control over daily operations and labor relations, including extent of local autonomy; similarity of skills, functions, and working conditions; employee interchange; geographic location; and bargaining history. *Esco Corp.*, 298 NLRB 837, 839 (1990). The burden is on the party opposing the single-facility unit to present evidence overcoming the presumption. *J & L Plate*, supra.

While the Employer maintains centralized control of aspects of its operations through District Manager Brian Hindman and Facilities and Operations Manager Louie Messina, the store managers retain the authority to assign daily jobs, field employee complaints and concerns, issue oral and written discipline warnings, prepare employee evaluations, hold monthly store meetings, accept applications for employment and participate in interviews, and reply to employees' requests for time off or unscheduled sick days. Although Messina retains final approval of hiring and firing decisions, the store managers make effective recommendations. The store managers play a significant role in discipline and employee evaluations, and recommend promotions and raises which Messina follows 60 to 70 percent of the time. This evidence demonstrates that the Novi and Fraser stores retain sufficient local autonomy to support a single-facility presumption. See *Rental Uniform Service*, 330 NLRB No. 44 (Dec. 13, 1999); *D & L Transportation*, 324 NLRB 160 (1997). Despite the fact that the Employer may centrally coordinate equipment purchases and advertising, as well as, maximize the efficient delivery of customer services, these are administrative functions which do not involve contact among unit employees. See *Rental Uniform Service*, slip op. at 3; *Neodata Product/Distribution*, 312 NLRB 987 (1993). Similarly, while Messina and Hindman make the final decision regarding the authorization of overtime, they frequently rely on the recommendations of store managers, and it is the store and service managers who determine which employees work the authorized overtime.

While there is evidence of employee interchange, each store has its own basic staff and little permanent interchange of employees among the four sites. Rather, if one facility needs a particular employee's expertise or is shorthanded, employees may be transferred, but only for a short period of time. The record

shows only seven permanent transfers in the last two years and there were no permanent transfers between the Traverse City store and the metropolitan Detroit stores. While drivers visiting other stores to pick up or deliver equipment do intersect with that stores' personnel, such irregular interaction is insufficient to rebut the single-facility presumption. See ***Bowie Hall Trucking***, supra at 43.

In the instant case, the existence of similar skills, functions, and terms and conditions of employment as well as the integration of certain aspects of the Employer's operations and administration is outweighed by the high degree of local autonomy at the individual stores. See ***Bowie Hall Trucking***, supra. In addition, the Traverse City store is located at least 200 miles from the other stores and neither party has advocated a unit composed of only the three metropolitan Detroit stores. See ***Acme Markets, Inc.***, 328 NLRB No. 173 (1999).

Accordingly, I find that the presumption of appropriateness of single-facility units has not been rebutted.

The Act does not require that the petitioned-for unit for bargaining be the only appropriate unit, or the most appropriate unit; the Act requires only that the unit be appropriate. ***Overnite Transportation Co.***, 322 NLRB 723 (1996); ***Vincent M. Ippolito, Inc.***, 313 NLRB 715, 717 (1994); ***Morand Bros. Beverage Co.***, 91 NLRB 409, 418 (1950). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." ***P. Ballantine & Sons***, 141 NLRB 1103 (1963).

In determining whether employees are properly included in a bargaining unit, the Board looks to whether the employees whose inclusion is at issue share a community of interest with the bargaining unit employees. The Board, in evaluating the community of interest of employees, considers the nature and skill of employee functions, the situs of the work, the degree of common supervision, working conditions, and fringe benefits, interchange and contact among employees, the functional integration of the facility, and bargaining history. ***Kalamazoo Paper Box Corp.***, 136 NLRB 134, 137 (1962). The Employer seeks to include the counter personnel in the petitioned-for unit of truck drivers, mechanics, yardmen, and parts men. I find the counter personnel's duties and responsibilities are highly integrated with and necessary for the smooth and efficient operation of the Employer's business, and they share a strong community of interest with the truck drivers, mechanics, yardmen, and parts men.

Counter personnel interact with mechanics, yardmen, parts men, and truck drivers on a daily basis, are sometimes assigned to deliver equipment or pick up supplies if there is a shortage of drivers, are trained to operate the forklifts, and

assist yardmen in loading and unloading equipment. Most counter personnel first worked in the store as yardmen. Counter personnel, yardmen, truck drivers, parts men, and mechanics share the same insurance program, holiday, and vacation schedule, 401-K pension plan, lunch times, lunch break area, overtime plan, and parking area, and all attend the same operational meetings and store functions.

Accordingly, I find that the counter personnel have a substantial community of interest with the yardmen, truck drivers, parts men, and mechanics, and that their inclusion in the unit is required.

5. For the above reasons, and based on the record as a whole, the following employees of the Employer constitute units appropriate for the purposes of collective bargaining within Section 9(b) of the Act:

Case 7-RC-21849:

All full-time and regular part-time mechanics, truck drivers, yardmen, parts men, and counter personnel employed at or out of the Employer's facility located at 48595 Grand River, Novi, Michigan; but excluding accounts payable clerks, salespersons, district fleet coordinators, dispatchers, service managers, store managers, district managers, regional directors, purchasing managers, parts supervisors, Nextel sales personnel, professional employees, office clerical employees, confidential employees, guards, and supervisors as defined in the Act.

Case 7-RC-21850:

All full-time and regular part-time mechanics, truck drivers, yardmen, parts men, and counter personnel employed at or out of the Employer's facility located at 31065 Groesbeck Highway, Fraser, Michigan; but excluding accounts payable clerks, salespersons, district fleet coordinators, dispatchers, service managers, store managers, district managers, regional directors, purchasing managers, parts supervisors, Nextel sales personnel, professional employees, office clerical employees, confidential employees, guards, and supervisors as defined in the Act.

Those eligible shall vote as set forth in the attached Directions of Elections.

Dated at Detroit, Michigan this 16th day of August, 2000.

(Seal)

/s/ Stephen M. Glasser.
Stephen M. Glasser
Acting Regional Director, Region Seven
National Labor Relations Board
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226-2569

440-1720-0133
420-4050
420-2900
420-5000

DIRECTION OF ELECTIONS

Elections by secret ballot shall be conducted under the direction and supervision of the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

LOCAL 324, A, B, C, D, INTERNATIONAL UNION OF
OPERATING ENGINEERS, AFL-CIO

LIST OF VOTERS⁵

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the elections should have access to lists of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **2** copies of an election eligibility list for each unit, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the lists available to all parties to the election. The lists must be of sufficient clarity to be clearly legible. The lists may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such lists must be received in the **DETROIT REGIONAL OFFICE** on or before **August 23, 2000**. No extension of time to file those lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by: **August 30, 2000**.

Section 103.20 of the Board's Rule concerns the posting of election notices. Your attention is directed to the attached copy of that Section.

⁵ If the election involves professional and nonprofessional employees, it is requested that separate lists be submitted for each voting group.

